

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

TRI CHURCH PARISH,

Plaintiff,

-vs-

PHILADELPHIA INDEMNITY INSURANCE
COMPANY,

Defendant.

ECF CASE

**PETITION FOR REMOVAL
BY DEFENDANT**

Civ. Action No.

PHILADELPHIA INDEMNITY INSURANCE COMPANY, defendant in the above-captioned matter, for purposes of removing this action from the Supreme Court of the State of New York, County of Chautauqua, in which it is now pending, to the United States District Court, Western District of New York, respectfully states, shows and petitions to the Court as follows:

1. State Court Action. This is an action originally filed on or about October 30, 2015, in New York State Supreme Court, County of Chautauqua, Index No. K12015-1366, being a suit originally entitled and styled as *Tri Church Parish, Plaintiff, v. Philadelphia Indemnity Insurance Company, Defendant.* A copy of the original summons and complaint filed with the Chautauqua County Clerk's Office is annexed hereto as **Exhibit A**. The state court action was filed and venued in Chautauqua County, New York, within this Court's territorial jurisdiction.

2. Federal Jurisdiction. Upon information and belief and as alleged in the complaint, the plaintiff has a principal place of operation in the State of New York.

Defendant Philadelphia Indemnity Insurance Company ("Philadelphia"), is incorporated in the State of Pennsylvania with its headquarters and principal place of business in the State of Pennsylvania. Further, upon belief and information and as alleged by the complaint, the amount in controversy is claimed to exceed \$75,000.00, exclusive of interest and costs. Indeed, the plaintiff's complaint seeks judgment "in an amount to be determined at trial but, in no event, less than \$1,000,000 plus interest." See Exhibit A. Accordingly, this Court has original jurisdiction over this action based upon complete diversity of citizenship of the parties pursuant to 28 U.S.C. § 1332(a), and this civil action is one which may be removed pursuant to 28 U.S.C. § 1441.

1. Timeliness of Removal Petition. The summons and complaint were served on Philadelphia on March 11, 2016, as shown by the acknowledgements of service of the New York State Department of Financial Services collectively attached hereto as **Exhibit B**. As such, removal of this action is timely under 28 U.S.C. § 1446(b), as made within 30 days of service.

2. Relief Requested. Philadelphia respectfully requests that the United States District Court, Western District of New York accept this Petition for Removal, remove this case and action from the New York Supreme Court, County of Chautauqua and take and assume jurisdiction over this matter and issue such further orders and processes as may be necessary to the trial and conclusion thereof. This Petition for Removal is submitted and filed without waiver of procedural or substantive defenses which are or may become available to Philadelphia.

DATED: Buffalo, New York
April 6, 2016

s/Eric T. Boron
Eric T. Boron, Esq.
MURA & STORM, PLLC
Attorneys for Defendant
930 Rand Building
14 Lafayette Square
Buffalo, New York 14203
(716) 855-2800
eric.boron@muralaw.com

cc: Charles C. Ritter, Jr., Esq.
DUKE, HOLZMAN, PHOTIADIS & GRESENS, LLP
Attorneys for Plaintiff
701 Seneca Street, Suite 750
Buffalo, New York 14210
(716) 855-1111

EXHIBIT A

STATE OF NEW YORK
SUPREME COURT: COUNTY OF CHAUTAUQUA

TRI CHURCH PARISH

41 E. Main Street
Brocton, New York 14716

Plaintiff,

v.

SUMMONS

2015 OCT 30 PM 3:22
COURTCLERK

PHILADELPHIA INDEMNITY INSURANCE COMPANY

Index No. K12015-1366 2

One Bala Plaza, Suite 100
Bala Cynwyd, Pennsylvania 19004

Sup't of Insurance

Defendant.

99 Washington Ave

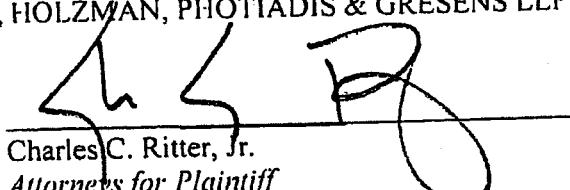
TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED AND REQUIRED to serve upon Plaintiffs' attorney, at the address stated below, a written Answer to the attached Complaint. If this Summons is served upon you within New York State by personal service you must respond within TWENTY (20) days after service, not counting the day of service. If this Summons is not personally delivered to you within New York State you must respond within THIRTY (30) days after service is completed, as provided by law. If you do not respond to the attached Complaint within the applicable time limitation stated above a judgment will be entered against you by default for the relief demanded in the Complaint, together with the costs and disbursements of this action, without further notice to you.

DATED: October 30, 2015
Buffalo, New York

DUKE, HOLZMAN, PHOTIADIS & GRESENS LLP

By:


Charles C. Ritter, Jr.
Attorneys for Plaintiff
701 Seneca Street, Suite 750
Buffalo, New York 14210
Tel.: (716) 855-1111

STATE OF NEW YORK
SUPREME COURT: COUNTY OF CHAUTAUQUA

TRI CHURCH PARISH

Plaintiff,

v.

COMPLAINT

PHILADELPHIA INDEMNITY INSURANCE COMPANY

Index No. K12015-1366

2015 OCT 30

PM 3:23

Defendant.

Plaintiff, by and through its attorneys, Duke, Holzman, Photiadis & Gresens LLP, as and for its Complaint against the Defendant State Farm Fire and Casualty Company, states and alleges as follows:

PARTIES

1. Tri Church Parrish ("Plaintiff" or "TCP") has a principal place of operation located at 41 East Main Street, Brocton, New York.
2. Upon information and belief, defendant Philadelphia Indemnity Insurance Company ("Defendant" or "PIIC") was and is an insurance company duly authorized to transact insurance business in the State of New York.
3. At all relevant times, Plaintiff owned improved real property located at 41 East Main Street as well as 35 East Main Street, Brocton, New York (the "Premises").
4. At all relevant times, Plaintiff operated a church and related facilities at the Premises.
5. PIIC issued and delivered to Plaintiff an insurance policy bearing policy number PHPK 888548 (the "Policy").

6. The Policy covered losses occurring between February 1, 2012 and January 1, 2014

7. The Policy was issued in consideration of a premium that was paid to, received by, and retained by PIIC.

8. Plaintiff is identified in the Policy as the "named insured."

9. The Policy provides Plaintiff with insurance against a fire loss, including for the repair and replacement cost of the Premises, the actual cash value of the Premises, and business property and contents at the Premises, among other coverages.

10. On or about November 3, 2013, the Premises and the contents therein were severely damaged by fire (the "Loss").

11. The fire constituted an occurrence and covered loss under the Policy.

12. The Policy provides coverage for the Loss.

13. PIIC acknowledged coverage and has provided Plaintiff advance payments for the Loss.

14. Plaintiff identified, with the assistance of its public adjuster, damage claims to PIIC for actual cash value and replacement cost benefits, among others, totaling more than \$3,000,000.

15. PIIC has provided a partial payment of actual cash value benefits, but failed to pay additional actual cash value amounts due and owing for damage to the structures and contents.

16. Plaintiff has notified PIIC of a claim for replacement cost benefits, and tendered a set of plans/design for a new church and related facilities proposed for construction at the Premises.

17. PIIC has not disapproved, questioned and/or disputed the plans/design for a new church and related facilities.

18. PIIC, through its silence and inaction, has acknowledged, consented to and agreed that the plans/design for a new church reflect a structure the cost of which is fully covered under the replacement cost provisions of the Policy.

19. PIIC has failed to take any action on the claim for replacement costs benefits.

20. PIIC has failed to provide any further payments for the Loss, and there exists a dispute as to the failure to pay actual cash value and replacement cost benefits owed to Plaintiff.

21. PIIC has conducted multiple examinations under oath, requested a large volume of documents and other information from Plaintiff and claims that it is continuing to investigate the Loss. PIIC's investigation and handling of the loss has been dilatory.

22. PIIC's dilatory investigation tactics have extended the period of time that Plaintiff has been without the funds to rebuild.

23. It has been almost two years since the date of the fire. PIIC has failed to pay actual cash value benefits that are owed, and failed to approve or even comment on Plaintiff's submitted plans for reconstruction.

24. Defendant has delayed a coverage resolution under the guise of a continued evaluation of the claim.

25. PIIC's continued delay amounts to action that no reasonable insurance carrier would take.

26. PIIC had a duty to investigate Plaintiff's claim in good faith.

27. PIIC had a duty to evaluate Plaintiff's claim honestly and promptly.

28. PIIC's continuing delay amounts to bad faith.

29. PIIC's representations that it was continuing to investigate and evaluate Plaintiff's claims were knowingly false.

30. PIIC's dilatory actions and failure to pay the Loss pursuant to the terms of the Policy have been unreasonable and in bad faith.

31. PIIC's conduct has unreasonably obstructed and prevented Plaintiffs from receiving prompt payment of the insurance benefits they are entitled to.

32. PIIC breached its duty and obligation of good faith and fair dealing in its handling of the Loss.

33. It was foreseeable both at the time the Policy was issued and renewed that the failure to promptly pay the coverage and benefits provided for would negatively and adversely affect Plaintiff and its assets.

34. Plaintiff has been damaged by PIIC's wrongful conduct, including that it has not received benefits owed under the Policy and it has sustained foreseeable extra-contractual damages, including consequential damages, attorneys' fees and litigation related expenses.

35. As a result of PIIC's breach and unreasonable/dilatory conduct, Plaintiff has been damaged and is entitled to judgment against PIIC in an amount to be determined at trial but, in no event, less than \$1,000,000 plus interest.

WHEREFORE, Plaintiff demands judgment against defendant PIIC as follows:

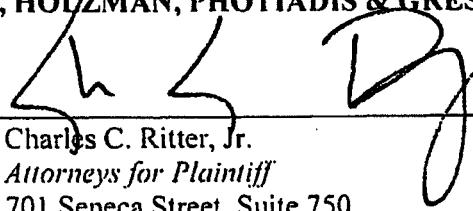
1. Determining that the Loss was a covered loss under the Policy;
2. Determining that Defendant is obligated to provide coverage for the entire Loss, including actual cash value and replacement cost benefits for the structure and

contents, and directing Defendant to participate in appraisal to determine the amount of the Loss,

3. Awarding a money judgment in an amount (a) for the Loss and other covered damages suffered by Plaintiffs in an amount to be determined at trial of not less than \$1,000,000 plus interest, and (b) for the extra-contractual consequential damages, attorneys' fees and litigation expenses incurred by Plaintiff as a result of Defendant's unreasonable, bad faith, and dilatory tactics in an amount to be determined at trial.
4. For such other and further relief as this Court deems just and proper.

Dated: October 30, 2015

DUKE, HOLZMAN, PHOTIADIS & GRESENS LLP

By: 

Charles C. Ritter, Jr.
Attorneys for Plaintiff
701 Seneca Street, Suite 750
Buffalo, New York 14210
Telephone: (716) 855-1111

EXHIBIT B



TO: Scott Yurko
Tokio Marine Specialty Insurance Company
One Bala Plaza, Suite 402
Bala Cynwyd, PA 19004-

RE: **Process Served in New York**
FOR: Philadelphia Indemnity Insurance Company (Domestic State: PA)

**Service of Process
Transmittal**
03/17/2016
CT Log Number 528834502

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Tri Church Parish, Pltf. vs. Philadelphia Indemnity Insurance Company, Dft.
DOCUMENT(S) SERVED: Letter, Summons, Complaint
COURT/AGENCY: Chautauqua County: Supreme Court, NY
Case # K120151366
NATURE OF ACTION: Insurance Litigation - Claim for policy benefits
ON WHOM PROCESS WAS SERVED: C T Corporation System, New York, NY
DATE AND HOUR OF SERVICE: By Regular Mail on 03/17/2016 postmarked on 03/14/2016
JURISDICTION SERVED : New York
APPEARANCE OR ANSWER DUE: Within 30 days after service
ATTORNEY(S) / SENDER(S): Charles C. Ritter, Jr.
Duke, Holzman, Photiadis & Gresens LLP
701 Seneca Street, Suite 750
Buffalo, NY 14210
716-855-1111
ACTION ITEMS: CT has retained the current log, Retain Date: 03/17/2016, Expected Purge Date: 03/22/2016
Image SOP
Email Notification, Nora Howard nhoward@phlyins.com
Email Notification, Scott Yurko scott.yurko@tmnas.com
SIGNED:
ADDRESS: C T Corporation System
111 Eighth Avenue
13th Floor
New York, NY 10011
TELEPHONE: 212-590-9070

STATE
ENT of
L SERVICES
RCE PLAZA
12257

03/14/2016
1ST PAGE \$01.20²
ZIP 12257
041L12202450

CT Corporation System
Philadelphia Indemnity Insurance
Company
111 Eighth Avenue
New York NY 10011





Andrew M. Cuomo
Governor

Maria T. Vullo
Acting Superintendent

STATE OF NEW YORK
Supreme Court, County of CHAUTAUQUA

Tri Church Parish

Plaintiff(s)

K12015-1366

against

Defendant(s)

Philadelphia Indemnity Insurance Company

RE :Philadelphia Indemnity Insurance Company

Attorney for Plaintiff(s) and Defendant(s) please take notice as follows:

Attorney for Plaintiff(s) is hereby advised of acknowledgement of service upon this Department Summons and Complaint in the above entitled action on March 11, 2016 at Albany, New York. The \$ 40.00 fee is also acknowledged.

Original to Attorney for Plaintiff(s):

Duke, Holzman, Photiadis & Gresens LLP
Charles C. Ritter, Jr.
701 Seneca Street
Suite 750
Buffalo, New York 14210

Persuant to the requirement of section 1212 of the Insurance Law, Defendant(s) is hereby notified of service as effected above. A copy of the paper is enclosed.

Duplicate to Defendant:

CT Corporation System
Philadelphia Indemnity Insurance Company
111 Eighth Avenue
New York, New York 10011

A handwritten signature in cursive ink that reads "Jacqueline Catalfamo".

Jacqueline Catalfamo
Special Deputy Superintendent

Dated Albany, New York, March 11, 2016
567799

STATE OF NEW YORK
SUPREME COURT: COUNTY OF CHAUTAUQUA

TRI CHURCH PARISH
41 E. Main Street
Brocton, New York 14716

Plaintiff,

v.

SUMMONS

2015 OCT 30 PM 3:22

PHILADELPHIA INDEMNITY-INSURANCE COMPANY

One Bala Plaza, Suite 100
Bala Cynwyd, Pennsylvania 19004

Index No. K12015-1364 2

Defendant.

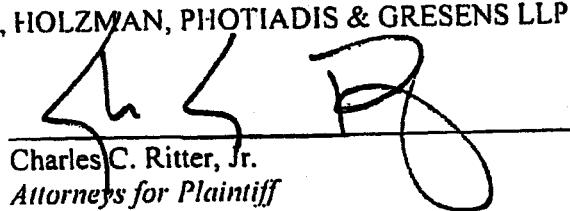
Supt of Insurance
99 Washington Ave
TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED AND REQUIRED to serve upon Plaintiffs' attorney, at the address stated below, a written Answer to the attached Complaint. If this Summons is served upon you within New York State by personal service you must respond within TWENTY (20) days after service, not counting the day of service. If this Summons is not personally delivered to you within New York State you must respond within THIRTY (30) days after service is completed, as provided by law. If you do not respond to the attached Complaint within the applicable time limitation stated above a judgment will be entered against you by default for the relief demanded in the Complaint, together with the costs and disbursements of this action, without further notice to you.

DATED: October 30, 2015
Buffalo, New York

DUKE, HOLZMAN, PHOTIADIS & GRESENS LLP

By:


Charles C. Ritter, Jr.
Attorneys for Plaintiff
701 Seneca Street, Suite 750
Buffalo, New York 14210
Tel.: (716) 855-1111

STATE OF NEW YORK
SUPREME COURT: COUNTY OF CHAUTAUQUA

TRI CHURCH PARISH

Plaintiff,
v.
COMPLAINT
PHILADELPHIA INDEMNITY INSURANCE COMPANY Index No. K12015-1366
Defendant.
2015 OCT 30 PM 3:22

Plaintiff, by and through its attorneys, Duke, Holzman, Photiadis & Gresens LLP, as and for its Complaint against the Defendant State Farm Fire and Casualty Company, states and alleges as follows:

PARTIES

1. Tri Church Parish ("Plaintiff" or "TCP") has a principal place of operation located at 41 East Main Street, Brocton, New York.
2. Upon information and belief, defendant Philadelphia Indemnity Insurance Company ("Defendant" or "PIIC") was and is an insurance company duly authorized to transact insurance business in the State of New York.
3. At all relevant times, Plaintiff owned improved real property located at 41 East Main Street as well as 35 East Main Street, Brocton, New York (the "Premises").
4. At all relevant times, Plaintiff operated a church and related facilities at the Premises.
5. PIIC issued and delivered to Plaintiff an insurance policy bearing policy number PHPK 888548 (the "Policy").

6. The Policy covered losses occurring between February 1, 2012 and January 1, 2014

7. The Policy was issued in consideration of a premium that was paid to, received by, and retained by PIIC.

8. Plaintiff is identified in the Policy as the "named insured."

9. The Policy provides Plaintiff with insurance against a fire loss, including for the repair and replacement cost of the Premises, the actual cash value of the Premises, and business property and contents at the Premises, among other coverages.

10. On or about November 3, 2013, the Premises and the contents therein were severely damaged by fire (the "Loss").

11. The fire constituted an occurrence and covered loss under the Policy.

12. The Policy provides coverage for the Loss.

13. PIIC acknowledged coverage and has provided Plaintiff advance payments for the Loss.

14. Plaintiff identified, with the assistance of its public adjuster, damage claims to PIIC for actual cash value and replacement cost benefits, among others, totaling more than \$3,000,000.

15. PIIC has provided a partial payment of actual cash value benefits, but failed to pay additional actual cash value amounts due and owing for damage to the structures and contents.

16. Plaintiff has notified PIIC of a claim for replacement cost benefits, and tendered a set of plans/design for a new church and related facilities proposed for construction at the Premises.

17. PIIC has not disapproved, questioned and/or disputed the plans/design for a new church and related facilities.

18. PIIC, through its silence and inaction, has acknowledged, consented to and agreed that the plans/design for a new church reflect a structure the cost of which is fully covered under the replacement cost provisions of the Policy.

19. PIIC has failed to take any action on the claim for replacement costs benefits.

20. PIIC has failed to provide any further payments for the Loss, and there exists a dispute as to the failure to pay actual cash value and replacement cost benefits owed to Plaintiff.

21. PIIC has conducted multiple examinations under oath, requested a large volume of documents and other information from Plaintiff and claims that it is continuing to investigate the Loss. PIIC's investigation and handling of the loss has been dilatory.

22. PIIC's dilatory investigation tactics have extended the period of time that Plaintiff has been without the funds to rebuild.

23. It has been almost two years since the date of the fire. PIIC has failed to pay actual cash value benefits that are owed, and failed to approve or even comment on Plaintiff's submitted plans for reconstruction.

24. Defendant has delayed a coverage resolution under the guise of a continued evaluation of the claim.

25. PIIC's continued delay amounts to action that no reasonable insurance carrier would take.

26. PIIC had a duty to investigate Plaintiff's claim in good faith.

27. PIIC had a duty to evaluate Plaintiff's claim honestly and promptly.

28. PIIC's continuing delay amounts to bad faith.

29. PIIC's representations that it was continuing to investigate and evaluate Plaintiff's claims were knowingly false.

30. PIIC's dilatory actions and failure to pay the Loss pursuant to the terms of the Policy have been unreasonable and in bad faith.

31. PIIC's conduct has unreasonably obstructed and prevented Plaintiffs from receiving prompt payment of the insurance benefits they are entitled to.

32. PIIC breached its duty and obligation of good faith and fair dealing in its handling of the Loss.

33. It was foreseeable both at the time the Policy was issued and renewed that the failure to promptly pay the coverage and benefits provided for would negatively and adversely affect Plaintiff and its assets.

34. Plaintiff has been damaged by PIIC's wrongful conduct, including that it has not received benefits owed under the Policy and it has sustained foreseeable extra-contractual damages, including consequential damages, attorneys' fees and litigation related expenses.

35. As a result of PIIC's breach and unreasonable/dilatory conduct, Plaintiff has been damaged and is entitled to judgment against PIIC in an amount to be determined at trial but, in no event, less than \$1,000,000 plus interest.

WHEREFORE, Plaintiff demands judgment against defendant PIIC as follows:

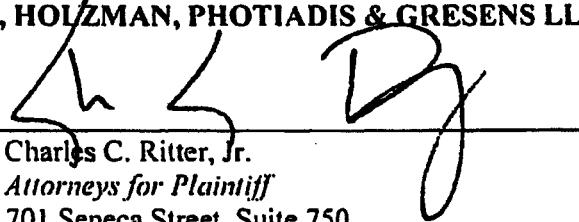
1. Determining that the Loss was a covered loss under the Policy;
2. Determining that Defendant is obligated to provide coverage for the entire Loss, including actual cash value and replacement cost benefits for the structure and

contents, and directing Defendant to participate in appraisal to determine the amount of the Loss,

3. Awarding a money judgment in an amount (a) for the Loss and other covered damages suffered by Plaintiffs in an amount to be determined at trial of not less than \$1,000,000 plus interest, and (b) for the extra-contractual consequential damages, attorneys' fees and litigation expenses incurred by Plaintiff as a result of Defendant's unreasonable, bad faith, and dilatory tactics in an amount to be determined at trial.
4. For such other and further relief as this Court deems just and proper.

Dated: October 30, 2015

DUKE, HOLZMAN, PHOTIADIS & GRESENS LLP

By: 

Charles C. Ritter, Jr.
Attorneys for Plaintiff
701 Seneca Street, Suite 750
Buffalo, New York 14210
Telephone: (716) 855-1111